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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/715,874	11/17/2000	Carl M. Sullivan	30222/20:100	7638

3528 7590 11/05/2002

STOEL RIVES LLP
900 SW FIFTH AVENUE
SUITE 2600
PORTLAND, OR 97204

EXAMINER

FERGUSON, LAWRENCE D

ART UNIT	PAPER NUMBER
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1774

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DATE MAILED: 11/05/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.		Applicant(s)	
	09/715,874		SULLIVAN ET AL.	
	Examiner		Art Unit	
	Lawrence D Ferguson		1774	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 August 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 and 18-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 and 18-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. This action is in response to the amendment mailed August 05, 2002.
Claims 1-11 were amended with claims 12-17 canceled and claims 18-26 added rendering claims 1-11 and 18-26 pending.

Claim Rejections – 35 USC 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 1-11 and 18-26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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- a. In claims 1, 18 and 22, the phrase, “sufficient amount” is relative and therefore indefinite. Sufficient lacks a requisite degree and is therefore indefinite.
 - b. In claims 1, 18 and 22, the phrase, “desired properties” is indefinite. It is unclear what properties are desired.
 - c. In claims 18 and 22, the term, “sufficiently” is relative and therefore indefinite.

Claim Rejections – 35 USC § 103(a)

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-11 and 18-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Watanabe et al. (U.S. 5,929,133) in view of Dehennau et al (U.S. 4,774,146).

Watanabe discloses a packaging film having transparency, anti-fogging property and PVC (abstract) having a suitable degree of air permeability (column 1, lines 21-22) which is analogous to gas permeability. Watanabe discloses a plasticizer consisting of epoxidated soybean oil (column 2, lines 63-65) and further discloses adipate polyester (column 2, line 66 through column 3, line 7). Watanabe discloses surface reactant agents (column 5, lines 15-17) and a heated mixture (column 5, line 24) of the materials. Claim ³2 reads 'to uniformly spread on the surface of the film'. Additionally, ^{Clm 9} 'one of the layers further comprises a process aid' are held to product by process claim limitations. "Even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." In re Thorpe, 227 USPQ 964, 966. Watanabe does not disclose the amount of surface-active agent or the amount of

Art Unit: 1774

plasticizer. The amount of surface active agent and amount of plasticizer are optimizable as they directly affect durability of the packaging film. It would have been obvious to one of ordinary skill in the art to optimize the components since discovering the optimum or workable value is of ordinary skill in the art. Watanabe does not disclose at least two layers that each include polyvinyl chloride.

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Dehennau teaches flexible thermoplastic structures comprising polymeric layers in form of films (abstract) comprising at least three layers where two polyvinyl chloride layers are bonded through an intermediate layer (column 2, lines 20-37) containing plasticized material (column 2, line 19). Dehennau additionally teaches a coating layer of polyvinyl chloride (column 2, lines 67-68). Watanabe and Dehennau are analogous art because they are from the same field of films. It would have been obvious to one of ordinary skill in the art to include an additional layer(s) consisting of polyvinyl chloride to the packaging film of Watanabe because Dehennau teaches the additional layers helps maintain the integrity of the film surface, by avoiding folds and small cracks (column 2, lines 9-10). Although the gas permeability rate is not specified for both layers, because the combination of references have the same materials as applicant, it would be expected that both layers would have the gas permeability as claimed, absent any evidence to the contrary. Neither reference teaches the two layers having varying melting points. Because the references comprise the same materials as applicant, it would also be expected that the melting points are the same, absent any evidence to the contrary.

Response to Arguments

6. Applicant's arguments of rejection under 35 USC 103(a) as unpatentable over Watanabe et al. (U.S. 5,929,133) are considered moot based on grounds of new rejection. Additionally, Applicant's arguments of rejection under 35 USC 103(a) as being unpatentable over Watanabe et al ((U.S. 5,929,133) in view of Purdy (U.S. 4,565,738) are considered moot based on grounds of new rejection.

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Art Unit: 1774

Conclusion

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lawrence Ferguson whose telephone number is (703) 305-9978. The examiner can normally be reached on Monday through Friday 8:30 AM – 4:30PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cynthia Kelly can be reached on (703) 308-0449. Please allow the examiner twenty-four hours to return your call.

The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)

308-2351.



Lawrence D. Ferguson
Examiner
Art Unit 1774

CYNTHIA H. KELLY
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1700

